

No. 251.

Motion papers for

Office Supreme Court, U.

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Filed <sup>IN THE</sup> Nov. 22, 1897.  
Supreme Court of the United States

OCTOBER TERM, A. D. 1897.

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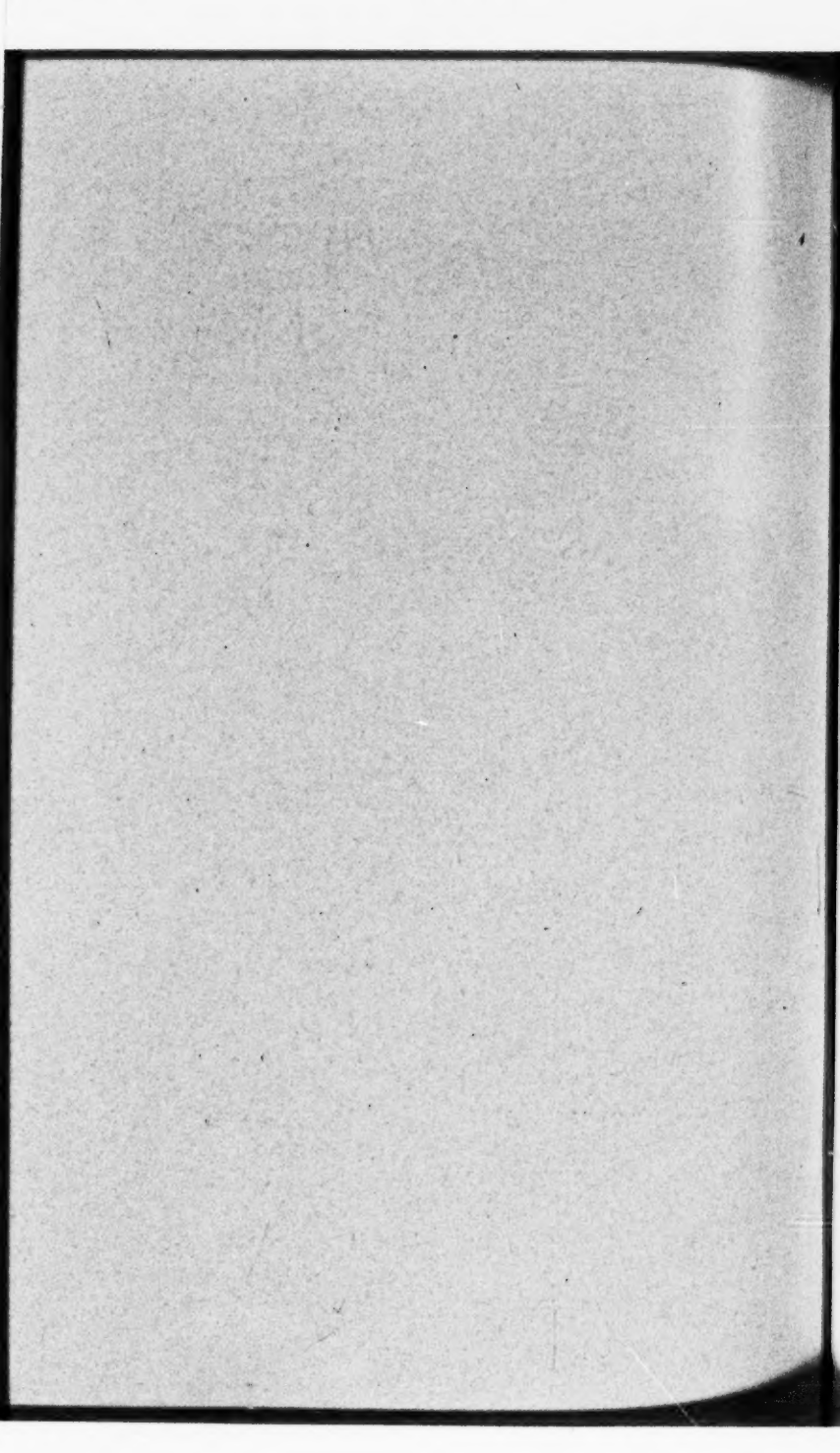
William Richardson, Trustee,  
*Plaintiff in Error,*

*vs.*

The Louisville and Nashville Railroad Company  
and others,  
*Appellees.*

MOTION TO DISMISS FOR WANT OF  
JURISDICTION.

GREGORY L. SMITH,  
Of Counsel for Appelles, The Louisville & Nashville Railroad Company



IN THE  
Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

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William Richardson, Trustee,  
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DICTION.

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Comes the appellee, the Louisville and Nashville Railroad Company, by its counsel of record, Gregory L. Smith, and moves the court to dismiss the above entitled cause for want of jurisdiction in the Supreme Court of the United States to review the same, in that :

It does not appear from the record that the questions relied upon by the plaintiff in error, to give jurisdiction to this court, were presented to the state courts for consideration at the proper time and in the proper manner.

The Supreme Court of Florida based its decision upon

two sufficient grounds, at least one of which does not involve, and is not claimed to involve, a Federal question.

No Federal question sufficient to give jurisdiction to this court to review the decision of the state court is involved in the cause or was decided by the Supreme Court of Florida.

### STATEMENT OF THE CASE.

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The material portions of the record upon which this motion is based show that this is a suit in ejectment, brought by the plaintiff in error in the Escambia County Circuit Court of the State of Florida, to recover of appellees "a tract or parcel of land "situate, lying and being in said county, known and "described as follows, to-wit: Lots Nos. one, two, "three, four, five, six, seven, eight, in square seven, and "square forty-seven (47), containing four lots, and lots "nine and ten in square number ten, in the water front "of Pensacola, according to the plan of said water front, "by James Harding, the said lots and parcels of said land "being on the projection of Tarragona street into the "bay of Pensacola." (Pr. Rec., 1, 2.) The defendants pleaded not guilty and the case was tried upon this issue.

Upon the trial of the case plaintiff offered in evidence what purported to be a Spanish grant made December 17, 1817, by Alexander Ramirez, intendent of the army, superintendent-general of Cuba and the two Floridas, to Vincento Sebastian Pintado of six tracts; a map of each tract is attached, designated respectively as plats A, B, C, D, E and F. The property in controversy is included

in the tract designated as plat C, which tract is described in the translation of the alleged grant as follows: "The  
 "lands designated by the letter C are an extension or  
 "tract of the bay of Pensacola, whose superficies of  
 "water is equal to an area of  $718\frac{1}{2}$  arpents, superficial,  
 "occupying between the eastern point of the mouth of  
 "the creek of Casa Blanca, commonly called Bayou Chico,  
 "and the western point of the mouth of the rivulet or  
 "creek of Texar, commonly called Bayou Texar, and a  
 "line drawn in the direction of south-east of the needle,  
 "ninety-five perches of Paris, within the sea, from  
 "the aforesaid first point, and the other line  
 "of 100 of said perches in length, counted  
 "from the second point mentioned within the sea, also  
 "from the same point of south-east of the needle, which  
 "embraces the whole of the front from the one to the  
 "other mouth of the creeks of Casa Blanca and Texar,  
 "between which is the Town of Pensacola, the whole  
 "conforming and according to the plan annexed, made  
 "for the greater clearness and understanding in which is  
 "represented the figure which the said land forms in the  
 "water and the limits within the bay of Pensacola, being  
 "that part of the land and beach which is found between  
 "the said two points of the mouths of the mentioned  
 "creeks, the curve which the shore of the water of the  
 "sea at its highest tide in calm weather makes, and with  
 "the depth from the surface of the water as far as ten  
 "feet English below the actual bottom, or towards the  
 "center of the earth, in the whole, the space which the  
 "figure represented in the said plan C embraces, consid-  
 "ering it as a solid, since it has the three dimensions of  
 "longitude, latitude and depth. \* \* \* The whole in  
 "full properly and for the purpose of constructing

“ wharves and houses for bathing, reserving and saving  
 “ not only the right of his majesty, but also that of the  
 “ public, at all times whenever it becomes convenient, and  
 “ it be designed to construct wharves with whatsoever  
 “ funds, municipal or common, intending the exclusion  
 “ only with respect to particular individuals.” (Pr.  
 Rec., 18, 19.) In connection with the grant plaintiff  
 offered to prove its execution.

The defendant objected to the grant upon the following  
 grounds, viz :

“ The grant so far as it relates to the *locus in quo* was  
 “ a mere license to Pintado to use the property in a par-  
 “ ticular way and vested in him no sufficient title upon  
 “ which to recover in ejectment.

“ Because said grant, so far as it relates to the *locus in*  
 “ *quo*, was not an exclusive grant of the property occu-  
 “ pied by the defendant.

“ Because said grant, so far as it relates to the *locus in*  
 “ *quo*, was not within the delegated authority of the offi-  
 “ cer who attempted to grant the same.

“ Because said grant, so far as it relates to the *locus in*  
 “ *quo*, is not one which was validated or recognized by  
 “ the treaty between the United States and Spain.

“ Because it is not shown that Alexander Ramirez had  
 “ the power or authority to make said grant, so far as it  
 “ related to the *locus in quo*.” (Pr. Rec., 6.)

The court sustained defendants' objections without  
 stating any particular reason therefor, and plaintiff ex-  
 cepted generally without specifically claiming any right  
 whatever under any treaty.

This ruling of the court was fatal to plaintiff's re-  
 covery, and there was a verdict for defendants; from the  
 judgment in this cause an appeal was taken to the Su-

preme Court of Florida. In the Supreme Court of Florida the plaintiff in error assigned the following error and no other, viz: "The refusal of the court to admit  
 "in evidence the grant from Alexander Ramirez to Vincento S. Pintado." (Pr. Rec., 27.)

The Supreme Court of Florida affirmed the ruling of the court below, and held that the purpose of the grant as to the water front therein described was not to grant the land and water as such within the described limits, but the right to use the same within the described limits and to the depth stated below the surface of the soil for the purpose of constructing wharves and houses for bathing, such right of use being to the exclusion of any similar right of use in any other individuals and subordinate to the right of the king and the public to construct wharves with municipal or common funds within such limits. Also, that while the king of Spain could have made such grant to Pintado, it would have been contrary to his laws then in force in West Florida and a case of special exception from their effect, and that Ramirez had no authority to make the grant, and that it was void and vested no authority in the grantee. (Pr. Rec., 28, 29.)

The Supreme Court of Florida then entered the following certificate: "In this cause, the judgment of the  
 "Circuit Court in and for Escambia County, Florida,  
 "having been affirmed, it is now certified that this is the  
 "highest court of law in the State of Florida in which  
 "a decision in this suit can be had; that the plaintiff in error herein claimed that the grant of land  
 "and water relied upon by him, as shown by  
 "the record, was included in the grants which  
 "remained confirmed under the terms of the treaty  
 "between the United States and Spain, dated Febru-



“ ary 22nd, 1819, and that an inquiry by this court  
“ into the authority of the officer making such grant, he  
“ having general authority to make grants, was pre-  
“ vented by the operation of said treaty; that the de-  
“ cision of this court was adverse to such contention and  
“ determined that such inquiry could be made, and that  
“ said officer had no power to make said grant, and that  
“ said grant was void; and that there was thereby drawn  
“ in question and decided adversely to the plaintiff in  
“ error a title, right or privilege claimed under a treaty  
“ of the United States.” (Pr. Rec., 29, 30.)

*Gregory Smith*  
Of counsel for appellee, the Louisville  
and Nashville Railroad Company.

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*To Mr. W. A. Blount, counsel for William Richardson,  
plaintiff in error:*

Take notice, that on the *13<sup>th</sup>* day of *December*  
189*7*, a motion will be made in the Supreme Court of  
the United States to dismiss the above entitled cause for  
want of jurisdiction in said court to review the same. A  
copy of the motion that will be so made, together with a  
copy of the printed brief on behalf of the Louisville and  
Nashville Railroad Company, one of the appellees, in  
support of said motion, is hereto attached.

*Gregory Smith*  
*Counsel for the Louisville and Nashville Railroad Com-  
pany, one of the Appellees.*

Copy

STATE OF *Illinois*  
COUNTY OF *Cook*

Personally appeared before me, *D. A. Peice*,  
a notary public in and for said state and county, Gregory  
L. Smith, and being by me duly sworn deposes and says,  
that he is of counsel of record for the Louisville and  
Nashville Railroad Company in the above entitled cause,  
and that on the *4<sup>th</sup>* day of *April*, 1897,  
*with postage prepaid*  
he deposited in the United States mails a printed copy of  
the foregoing notice, with a copy of the motion and brief  
therein referred to, addressed to W. A. Blount, Pensacola,  
Florida; that said Blount is counsel of record for the  
plaintiff in error in said cause, and that said address was  
and is the proper postoffice address of the said W. A.  
Blount.

*Gregory L. Smith*

Subscribed and sworn to before me this, the *17<sup>th</sup>*  
day of *November* 189*7*, as witness my hand and the  
seal of my office.

*(Signed) D. A. Peice*  
*Notary Public*

*seal*